

# North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 26 JULY 2017

SUBJECT OF REPORT: NYE DROVE

TOWN OR PARISH: BANWELL

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

## RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the making of a Definitive Map Modification Order adding the route A-B-C-D shown on the attached plan EB/Mod 51 as a Bridleway to the Definitive Map on the grounds that there is sufficient evidence to show that this has been established under Section 53 of the Wildlife and Countryside Act 1981; and
- (ii) if no objections are made and sustained, that authorisation be given for the confirmation of the Order; and
- (iii) that if objections are made, that the Order will be forwarded to the Secretary of State for determination. If this happens, subject to officers being content that there was no significant change to the balance of evidence, the Council will support the Order at any subsequent Public Inquiry.

## SUMMARY OF REPORT

The determination of this application is by Direction from the Secretary of State dated 21 March 2017. Within that direction this application is required to be determined by 31 December 2017.

This report considers an application which was made on the 9 July 2004. That application requested that a particular route, in the Parish of Banwell part of which is known as Footpath AX29/48, the remainder being un-recorded, should be recorded for its full length as a Bridleway. Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area.

The application was submitted supported by suggested historical evidence.

A visual assessment has been undertaken which confirmed that this route is being used by the public as a bridleway.

This report details specific historical evidence relating to the establishment and acceptance of this route by both adjacent landowners and the public. The claimed route is illustrated on the attached plan entitled Location Map as A-B-C-D.

In order that members may consider the evidence relating to this application, further details about the claim itself, the basis of the application, and an analysis of the evidence considered are included in the Appendices to this report, listed below. Also listed below are the Documents that are attached to this report. Members are also welcome to inspect the files containing the information relating to this application, by arrangement with the Public Rights of Way Section.

**Appendix 1** – The Legal Basis for Deciding the claim

**Appendix 2** – History and Description of the Claim

**Appendix 3** – Analysis of Applicants Evidence

**Appendix 4** – Analysis of Historical Documents Considered

**Appendix 5** – Consultation and Landowners Responses

**Appendix 6** – Summary of Evidence and Conclusion

**Location Plan**

**Document 1** – Day and Masters Map 1782

**Document 2** – Greenwood Map of Somerset 1822

**Document 3** – Banwell Tithe Map 1838

**Document 4 & 5** – Finance Act 1910

**Document 6 & 7** – Handover Map 1930

**Document 8 & 9** – Definitive Map 1956

## POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “Health and Wellbeing” and “Quality Places”.

## DETAILS

### Background

#### i) The Legal Situation

North Somerset Council, as Surveying Authority, is under a duty imposed by the Wildlife and Countryside Act 1981, Section 53(2) to keep the Definitive Map and Statement under continuous review. This includes determining duly made applications for Definitive Map Modification Orders.

The statutory provisions are quoted in **Appendix 1**.

#### ii) The Role of the Committee

The Committee is required to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.** It is also important



to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the Planning Inspectorate (who act for the Secretary of State for Environment, Food and Rural Affairs) for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Planning Inspectorate.

## Conclusion

As this report relates to a route which is partly recorded as Footpath AX29/48 and partly unrecorded on the Definitive Map it is necessary for the Committee to have regard to two legal tests.

1. Section 53 (3)(c)(ii) relating to the section recorded as Footpath AX29/48 is whether, given the evidence available, that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and;
2. Section 53(3)(c)(i) relating to the section which is currently unrecorded is whether, given the evidence available that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

If the Committee is of the opinion that the relevant test has been adequately met, it should determine that a Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See Appendix 1.

## CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage neighbouring landowners have been contacted. In addition to this Banwell Parish Council and Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in Appendix 5.

## FINANCIAL IMPLICATIONS

At present the council is required to assess the information available to it to determine whether there is sufficient evidence to support the application. There will be no financial implications during this process. Once that investigation has been undertaken, if authority is given for an Order to be made then the Council will incur financial expenditure in line with the advertisement of the Order. Further cost will be incurred if this matter needs to be determined by a Public Inquiry. These financial considerations **must** not form part of the Committee's decision.

## RISK MANAGEMENT

The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible. Due to the number of outstanding applications awaiting determination

officers of North Somerset Council, in conjunction with the PROW Rights of Way Sub Committee have agreed a three tier approach when determining the directed applications. A report was presented to the Committee in November 2016 which outlined a more streamline approach. This could result in challenges being made against the Council for not considering all evidence.

The applicant has the right to appeal to the Secretary of State who may change the decision of the Council (if the Council decided not to make an Order) and issue a direction that an Order should be made. Alternatively if an Order is made objections can lead to a Public Inquiry.

## EQUALITY IMPLICATIONS

Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

## CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

## OPTIONS CONSIDERED

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for the route A-B-C-D.

## AUTHOR

Elaine Bowman, Senior Access Officer Modifications, Access Team, Natural Environment  
Telephone 01934 888802

BACKGROUND PAPERS: - Public Rights of Way File Mod 51

## The Legal Basis for Deciding the Claim

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required as a result of the occurrence of certain specified events.
2. Section 53(3)(b) describes one event as, "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway". See paragraph 4.

Subsection 53(3) (c) describes another event as, "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) "that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic"
- (ii) "that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description"

The basis of the application in respect of the Bridleway is that the requirement of Section 53(3)(c)(i) and (ii) has been fulfilled.

3. Section 32 of the Highways Act 1980 relating to evidence of dedication of way as highway states " A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered documents, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced".
4. Section 31 (1) of the Highways Act 1980 provides that, "Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it".

Section 31 (2) states, "the period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by a notice or otherwise".

Section 31 (3) states, "Where the owner of the land over which any such way as aforesaid passes-

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action. A deemed dedication may be inferred from a landowners' inaction. In prescribing the nature of the use required for an inference of dedication to be drawn, the same principles were applied as in the case of a claim that a private right of way had been dedicated; namely the use had been without force, without secrecy and without permission.

**The Committee is reminded that in assessing whether the path can be shown to be a public right of way, it is acting in a quasi-judicial role. It must look only at the relevant evidence and apply the relevant legal test.**

5. Modification orders are not concerned with the suitability for use of the alleged rights. If there is a question of whether a path or way is suitable for its legal status or that a particular way is desirable for any reason, then other procedures exist to create, extinguish, divert or regulate use, but such procedures are under different powers and should be considered separately.

## History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 9 July 2004 from Mrs V Craggs representing Woodspring Bridleways Association ("The Association"). The basis of this application was that the route A-B-C-D should be recorded as a Bridleway. The applicant listed upon their claim the documents which were felt relevant and the details of the landowners notified of the claim.

Listed below is the documentary evidence that the Association referred to:

1782 Day and Masters  
1902 O S Map  
1958 O S Map  
Believe that this route pre dates 1935

The above documents will be reported on in Appendix 3.

2. In addition to the above, correspondence dating back to 1994 has also been submitted which details work undertaken by Woodspring Bridleways Association to negotiate the opening up of this route with the assistance of the adjoining landowners.

This matter is currently recorded on the Definitive Map Register as Mod 51.

It should be noted that the Council has visually undertaken additional research into records that are held within the Council which will be listed within Appendix 4.

2. The 2004 application claims that a Bridleway should be recorded over a route known as Nye Drove which runs between Drove Way and Riverside. A section of this route is recorded on the Definitive Map as Footpath AX29/48 (A-B) and the other section is un-recorded (C-D). The claimed route falls in the Parish of Banwell.
3. The claimed Bridleway is illustrated as a bold black dashed line on the attached Location Map (scale 1:7791).

### **Analysis of the Applicants Evidence**

The claim is based on documentary evidence suggested by the applicant and written correspondence supplied. This route is illustrated A-B-C-D on the Location Map (Scale 1:7791).

#### **Day and Masters Map (1782) North Somerset Council**

The applicant has referred to this document within the original application. This plan relates to the area of land covered by Weston super Mare, Churchill and Nailsea. The claimed route is illustrated running adjacent to what appears to be the river. This plan suggests that the route was available as a through route between A-B-C-D, Drove Way to Riverside but does not assist with status. An extract of this plan is attached as **Document 1**.

#### **Greenwood Map of Somerset (1822) North Somerset Council**

The applicant has referred to this document in correspondence with Woodspring District Council. This map illustrates the route A-B-C-D similar to that shown on the Day and Masters Map. Visually the route is obscured due to the depiction of a dashed boundary marking. Once again, its depiction on this plan does not provide evidence of its status only that a through route existed on the ground. An extract of this plan is attached as **Document 2**.

#### **David & Charles 1884**

The applicant has referred to this document in correspondence with Woodspring District Council. From copies which I have been able to look at online, this route is clearly depicted running between two water courses from Drove Way through to Riverside, unfortunately I have not been able to print a copy off.

#### **Ordnance Survey 1902**

The applicant has referred to 1902 O.S. mapping within correspondence with Woodspring District Council, however no copy has been found.

#### **Ordnance Survey 1958**

I have been unable to locate this plan.

It would appear from the historical documents lists above that this route has been illustrated on mapping since 1782 in the same way, a route open and available for use.

#### **Documented Written History**

Woodspring Bridleways Association believe that Nye Drove is an ancient Highway joining Riverside Banwell and Drove Road between Sandford and Puxton. This highway was first recorded on the Day and Masters Map 1782 in a manner similar to all other roads in the area.

In 1994 Mrs Craggs commenced negotiations with the owners of the land adjacent to the drove. It would appear that around 1978 historical fencing or hedging had been removed by the West Mendip Internal Drainage Board to reopen the initial section of approximately

1200 metres which would allow maintenance of the Liddy Yeo Rhyne. This also allowed access for landowners into their adjoining fields. The negotiations included agreement to the re-installation of fencing and cutting back vegetation to a useable width of 4 metres. The works were organised by Woodspring Bridleways Association and paid for through grants and donations from a number of locations including £500 from Woodspring District Council. The route had an official opening, attended by Lord Cope of Berkeley and supported by Woodspring District Council.

There is no doubt that this route is being used regularly as a Bridleway with acceptance by the adjoining landowners (no record is shown on Land Registry of this being part of anyone's ownership).

No user evidence has been submitted to support their claim.

### Historical Evidence Considered

In addition to the evidence suggested by the applicant the following documents have been looked at to ascertain a view of the historical use of this route.

#### **Banwell Inclosure Award 1797**

This document, produced in 1797 only relates to the Commons and Waste lands and does not include the route which is the subject of the claim.

#### **Banwell Tithe Map and Apportionment 1838**

The tithe apportionment is a statutory document, conclusive evidence of matters relating to the payment of tithe of workable land. Strictly, the map is only an explanation of the apportionment and not a statutory document in its own right. Several features of the tithe commutation process lend weight to the evidential value of the documents: the public and statutory nature of the process, the external and internal checks carried out at the time, the impartiality of the process, and the official custody in which the records have been kept. It is considered to be a document of great value. It was prepared under statutory authority by the Tithe Commissioners, with great care and accuracy, to show all cultivated land, arable and pasture, because tithe was payable on land which produced crops. Waste land and roads were shown, even when not liable to tithe, and provided useful geographical reference points.

The Banwell Tithe Map and Award shows the claimed route shaded ochre bounded on both sides. This colouring is similar to other routes in the area which are believed to have been the roads of the parish.

There are other ways which are similarly shaded in Banwell, some of which are now county highways; some public footpaths and some do not have any public rights recorded over them. This document can be found in **Document 3**.

#### **Finance Act 1910**

The Finance Act allowed for the levying of a tax on the increase in value of land. All holdings or hereditaments were surveyed and recorded with an individual number on a special edition of the Second Edition OS County Series Maps at 1:2500 scales.

On this plan it can be seen that the full extent of the route of Nye Drove is excluded from the adjoining hereditaments, nor has Nye Drove been allotted a hereditament number of its own.

The Finance Act process was to ascertain tax liability not the status of highways. The documents are relevant where a deduction in value of land is claimed on the grounds of the existence of a highway.

As no hereditament has been allocated to Nye Drove the only information that can be gained from this is that it was not considered eligible for Tithe.

This is however strong evidence as to the existence of this route as a through route capable of being used by the public. Extracts of this plan are located in **Documents 4 & 5**.



## **1930 Handover Maps**

The purpose of these plans was to illustrate routes which were considered to be public highways maintained by the local authority. As can be seen routes are coloured according to their differing category, Red being main routes, blue being secondary routes and yellow minor highways.

Nye Drove is not coloured in anyway. Therefore at this time this route was not considered to be part of the public highway network. Once again it does confirm that it was in existence but does not apply a status. Extracts of these plans are located in **Documents 6 & 7**.

## **1956 Definitive Map Process**

The Definitive Map was prepared by Somerset County Council in accordance with the requirements of the National Parks and Access to the Countryside Act 1949. Surveys carried out by the Parish Councils led to the preparation of Draft Maps.

At that time the Parish Council recorded Footpath AX29/48 as commencing on Drove Way proceeding in a south westerly direction along Nye Drove for approximately half of its distance before turning in a south easterly direction. No record was made of the route as it continued from B-D. An extract of this map are located in **Documents 8 & 9**.

## Consultation and Landowner Responses

A pre-order consultation letter was sent to adjoining landowners and interested parties on the 25 May 2017. The following responses have been received.

### Consultation Responses

The following parties responded to this consultation, the content of their response also being recorded.

<b>Name</b>	<b>Objection or Supporter</b>	<b>Comment</b>
Mr G Plumbe Green Lane Protection Group	No Objection	No wish to make a representation on this one.
Mr S Bunn Open Spaces Society	Supporter	The Open Spaces Society supports the proposed Modification of the definitive Map under section 53(5) of the Wildlife and Countryside Act 1981 – Nye Drove Banwell
Bristol Water	No Objection	We confirm that we have no objection to the bridleway notification at Nye Drove.
Mrs V Craggs	Supporter	Thank you for your email about Nye Drove Just to put you in the picture again on this. We have a video and photos of the opening of the route, Opened by Sir John Cope {MP} and Derrick Mead, who owned the field opposite Nye Farm. The fence was taken out before he bought the field. This fence was put back with monies from WDC [ACC] and WBA. All the landowners agreed that they did not own any of the Drove. I think Peter Burden was there to. We also had Radio and TV. WBA had a long distance ride to raise money. Bubbly and cake.
National Grid	No Objection	Cadent and National Grid have no objection to these proposals.
Atkins Global	No Objection	We Confirm that we have no objection
Mr M J Trickey	Objection	I am writing about application for Modification of the definitive map under section 53 (5) of the Wildlife and Countryside Act 1981 – Nye Drove Banwell. I object on the basis the drove is private own for land and farmer's use only as stated in the Manor of Banwell Inclosure Act 1795.
Virgin Media	No Objection	Virgin Media and Vital plant should not be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
D & M Parker	No Objection	I personally have no knowledge of the history of Nye Drove, so can't provide evidence of any long-standing use by horse riders. I have referred the case to the Management Committee of the Mendip Society, who also deny any knowledge of it! They would, however, raise no objection in principle to the use of the Drove as a bridleway.

So that the Society is kept up to date on this, I would appreciate being informed of the outcome of the proposal.

Liz Shayler –  
Banwell Parish  
Clerk

No Objection

After their meeting on 12<sup>th</sup> June 2017. Banwell Parish Council noted the application for modification of the definitive map under Section 53(5) of the Wildlife and Countryside Act 1981 – Nye Drove. They did not have any comments to make.

Lynne  
Rampton –  
Clerk to  
Winscombe &  
Sandford  
Parish Council

Supporter

The Parish Council considered the modification order to a bridleway at a meeting on 26<sup>th</sup> June 2017. Members were in favour of the modification order as the creation of a bridleway in this location allows a link to Banwell, away from main roads.

Eddy Hicks –  
Woodspring  
Ramblers,  
Footpath  
Secretary

Supporter

I refer to the proposed Modification Order, and confirm that Ramblers support the application, but would make the following observations:

The proposal involves upgrading part of Footpath AX29/48 to Bridleway – there is currently no finger post indicating a RoW where it leaves Drove Way. Where AX29/48 is indicated on the definitive map to turn from south westerly direction to a south easterly direction and leave Nye Drove, there is no bridge over the Liddy Yeo and the definitive line cannot be followed. There is however, an old stone farm bridge some 100 metres further along Nye Drove giving access into the same field. Whilst recent maintenance on the rhine has cleared the footpath for some of the way off Drove Way, the rest of the section on Nye Drove, and the section of Nye Drove that is proposed for addition to the Map (the appears to be having some use now) is overgrown. I trust the question of maintenance will be addressed should an order be made.

When considering this matter it should be remembered that applications must be decided on the facts of the case, factors such as desirability or suitability cannot be taken into consideration.

### **Date of Challenge**

For public rights to have been acquired under Section 31 of the Highways Act 1980, a twenty-year period must be identified prior to an event which brings those rights into question.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action.

However, there appears to be no date of challenge for this application. This is supported by the evidence that the route was to be used as a Bridleway when the full length of the route, A-B-C-D, was opened by Woodspring Bridleways Association on 1<sup>st</sup> April 1996.

## Summary of Evidence and Conclusion

### Summary of Documentary Evidence

Taking the documents which the applicant has relied upon these illustrate the existence of the route along the same line since 1782. On all other documents looked at this route has not changed, however the fact that these are depicted does not confirm status.

Looking at all the evidence, the route Nye Drove is clearly depicted on all the maps as a through route providing connectivity to two highways, namely Drove Way and Riverside, where it is shown as a bounded track for its full length.

Additionally, none of the maps show any indication of gates or fences that could potentially prevent the public accessing the route, therefore suggesting that the route was capable of being used by the public as a through route for access between Banwell and Puxton.

In plans such as the Banwell Tithe Map 1838 and the Finance Act 1910, whereby they indicate ownership of the surround lands, there doesn't appear to be any evidence of land ownership which includes the Nye Drove route.

Furthermore, the Tithe Map, demonstrates the roads coloured in an ochre colour which seems to draw a distinction between routes which are now known to be public and others which are not. In this case, Nye drove is depicted in this colour, which in this case, would indicate the route to be used as public access. Of which, in comparison to the present day, most of the other route that were depicted in this colour are now recognised as adopted highways.

During the Definitive Map process in 1950 the Parish Council only considered the use which appeared to be made of a section of this route and recorded that as Footpath AX 29/48. This could imply that at this route the continuation of the route through to Riverside was overgrown by vegetation, indeed we were told that the Water Board removed fencing in order to gain access to the Liddy Yeo Rhyne.

Clear evidence has been given that Woodspring Bridleways Association, supported by the adjoining landowners, established the re-opening of this route. This has continued to be used since 1996 even maintaining the route by clearing minimal vegetation to ensure that a route is available for users.

It may be said that the adjoining owners did not have the right to agree to this however, where the ownership of land cannot be proven either by adjoining landowners or historical documentation there is a presumption that the adjoining landowners have a joint interest in the ownership of the claimed route.

The applicants will suggest that this route has been illustrated on maps since 1782 showing a route capable of being used by the transport of the time, whether that was pedestrian, horse or horse and carriage (Once a Highway, Always a Highway). This may be true; however no evidence has been submitted that horse and carriage use has been made.

Therefore, a judgement can only be made on the evidence placed before us and based on this documentary evidence, the Officer does feel that the evidence supports the claim that this route should be recorded as a Bridleway.

## Consultation Responses

As detailed within Appendix 5 a total number of 12 responses were received. Four letters of support, one letter of objection and seven confirming no objection. The one objection comes from a neighbouring landowner, who claims **“that the drove is private own for land and farmers use only as stated in the Manor of Banwell Inclosure Act 1795”**. As previously stated the Banwell Inclosure Award of 1797 has been looked at and no mention is made of this route either as Nye Drove or any other name.

## Conclusion

This application affects a route A - B which is partly already recorded on the Definitive Map as a Footpath. To alter the status of a route on the Definitive Map, the evidence must indicate that the route which is already recorded **“ought”** to be shown as a route of a different status. This is considered a stronger test than a simple addition to the Definitive Map, where the requirement is that a right of way “is reasonably alleged to subsist”. The term “ought” involves a judgement that a case has been made and that it is felt that the evidence reviewed in the investigation supports the application on the balance of probabilities.

Therefore, taking firstly the section A – B which is currently recorded as Footpath AX 29/48 this is the section most relevant to the negotiations entered between Woodspring Bridleways Association and the adjoining landowners. It was over this section that agreement was reached for fencing to be reinstated. Woodspring believed that the ancient drove should be reinstated so that public use could once more be made of it, a route capable of being used by pedestrians, horses and perhaps horse and carriage.

The section B-C-D was also cleared of vegetation to the agreed width of 4 metres which would seem a reasonable request bearing in mind that this route had been shown on historical maps as a route of similar width.

Regarding the section recorded as Footpath AX29/48 as this is already a public footpath the higher test of “on the balance of probabilities” needs to be considered. Once again, this route has appeared on plans since 1782 as a bounded track. The historical evidence has shown that there haven’t been any obstructions even to the present day even though the existence of a gate does not preclude a route having higher status than that already recorded.

Having regard for the legal tests that should be applied in respect of the route B-C-D “does a route subsist or is reasonably alleged to subsist”. The historical evidence shows that a route has been evident on the ground since 1782, there is no evidence to show that any form of structure has existed to deter or stop use. What is clear that use may have been restricted by over grown vegetation. and the fact the applicant has submitted evidence of the route opening in 1996, provides sufficient evidence for the route claim to be accepted.

Regarding the above it is necessary to refer to Appendix 1 and the Legal Basis for deciding this claim. As it states in Section 32 the historical documentation namely the Tithe and Finance plans illustrate that this route was not considered to be part of the adjoining landownerships suggesting some form of highway right, but not clarifying status.

Section 31(1) to (3) lay out the requirements to consider a route either established by common law or presumed dedication. There is no evidence to suggest that any attempt has been made by landowners to stop use of this route either before 1994 when this

application was made or since the route was officially opened in 1996. This would imply that this route has met the common law test of dedication by the landowner and acceptance by the public. That test requires showing either that the landowner accepted the use that was being made of the route or the use to be so great that the landowner must have known and taken no action.

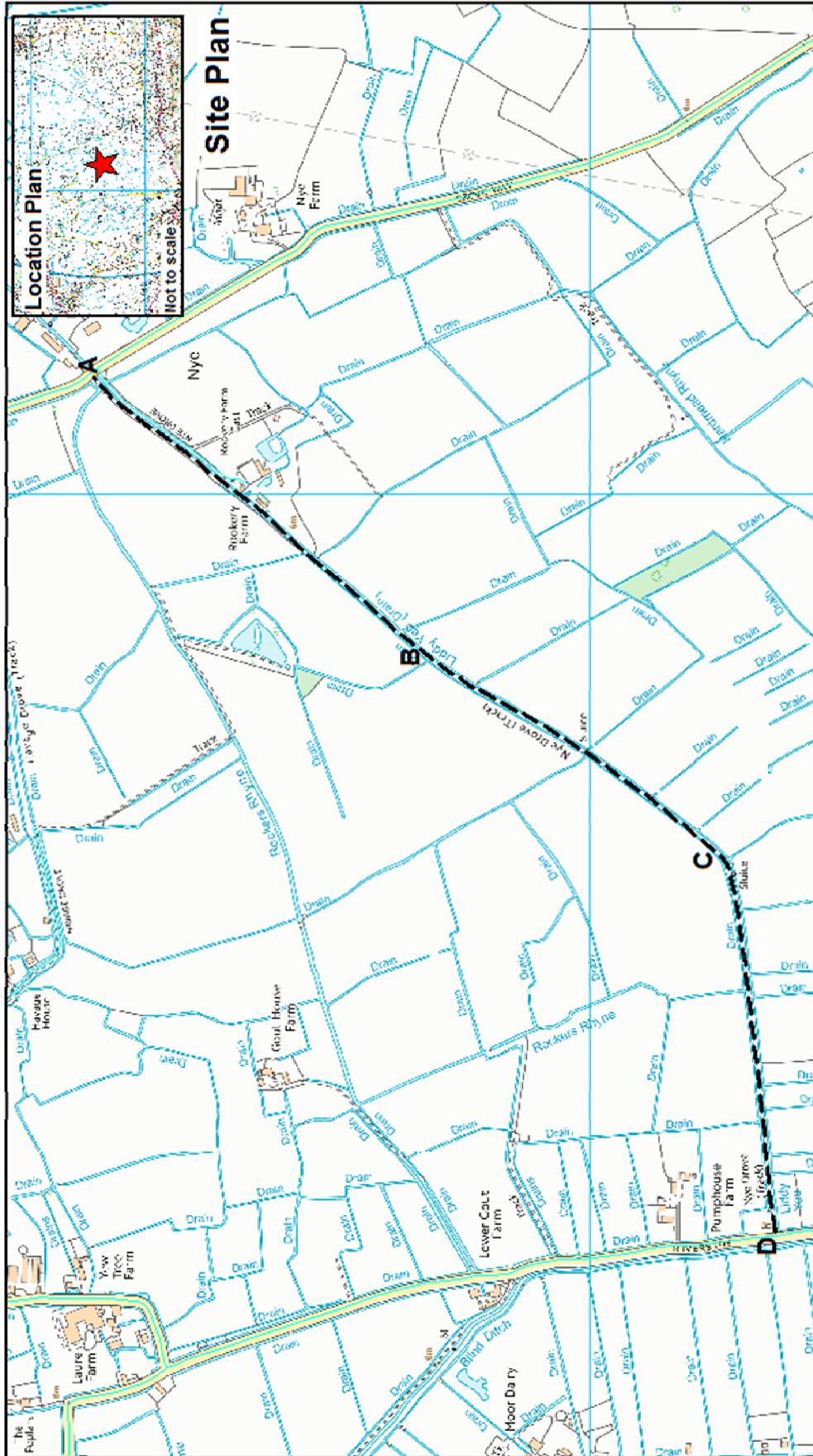
We are unable to determine whether this land is owned by one or more parties despite having written to all of the adjoining owners therefore the presumption that in the absence of an owner, that the adjoining parties have a shared interest. Those parties agreed for the route to be re-instated to its full width, vegetation cleared and an official opening held.

This would appear to meet the criteria of acceptance followed by use by the public.


Therefore, it is felt by the officer that taking all the documentary evidence detailed above submitted by the applicant and researched by North Somerset Council is sufficient to support the claim that this route A-B-C-D should be recorded on the Definitive Map as a Bridleway.

**It is therefore recommended that a Definitive Map Modification Order for the section of Footpath AX 29/48 between A-B and the unrecorded section B-C-D should be made and subsequently recorded on the Definitive Map as Bridleway.**

# LOCATION PLAN

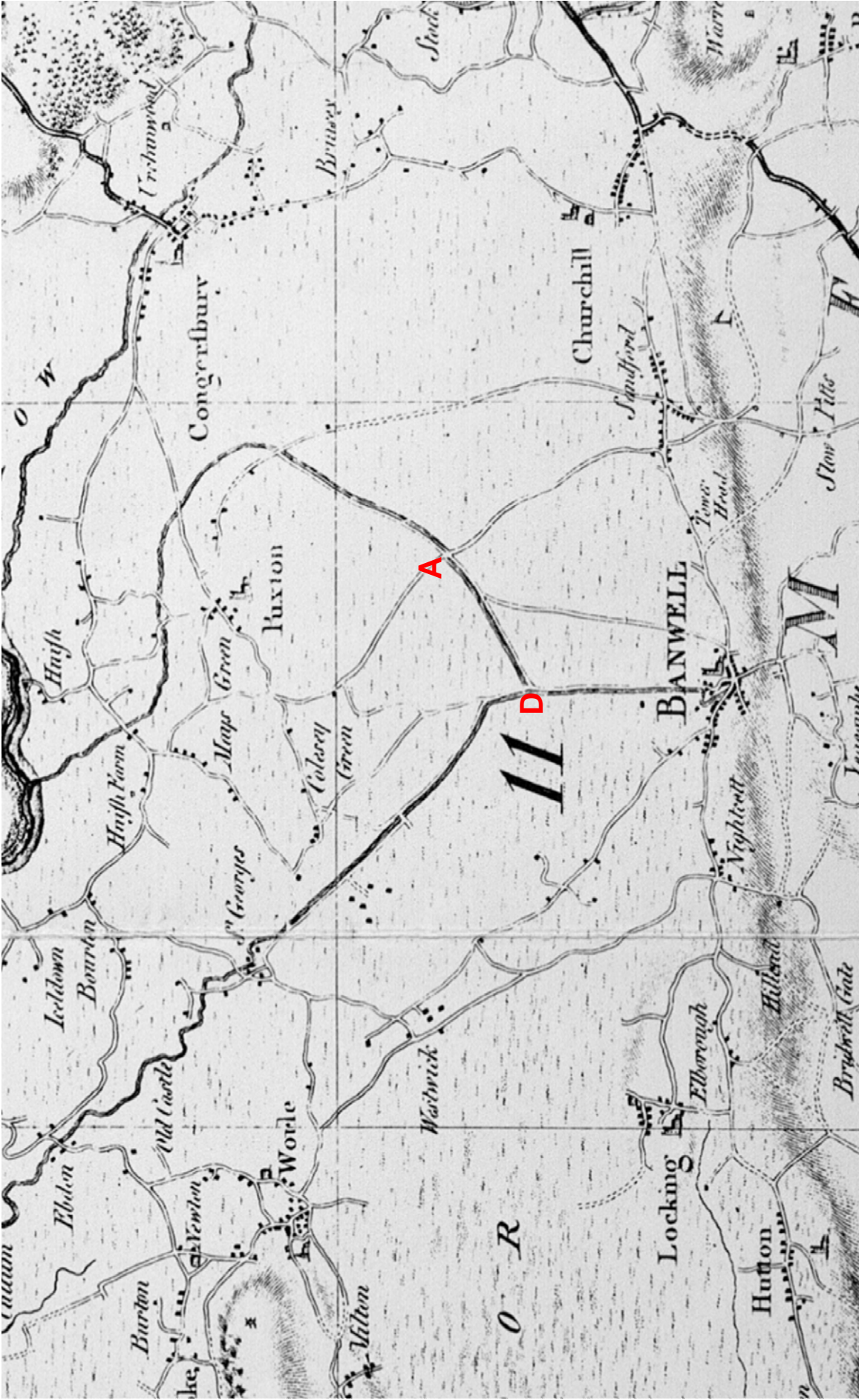


**Map No.** EB/Mod 51  
**Scale** 1:7791  
**Grid Reference** ST4061  
**Date** 22 May 2017  
**Development & Environment**  
 Public Rights of Way  
 Streets and Open Spaces  
 North Somerset Council  
 Town Hall  
 Wallisote Grove Road  
 Weston-super-Mare  
 BS23 1UJ  
 Tel: 01934 888 802  
**Claimed Bridleway** ----- **A-B-C-D**

**Wildlife & Countryside Act 1981 - Sec 53** North Somerset District Council  
**Claimed Bridleway Nye Drive**  
**Proposed Definitive Map Modification Order**  


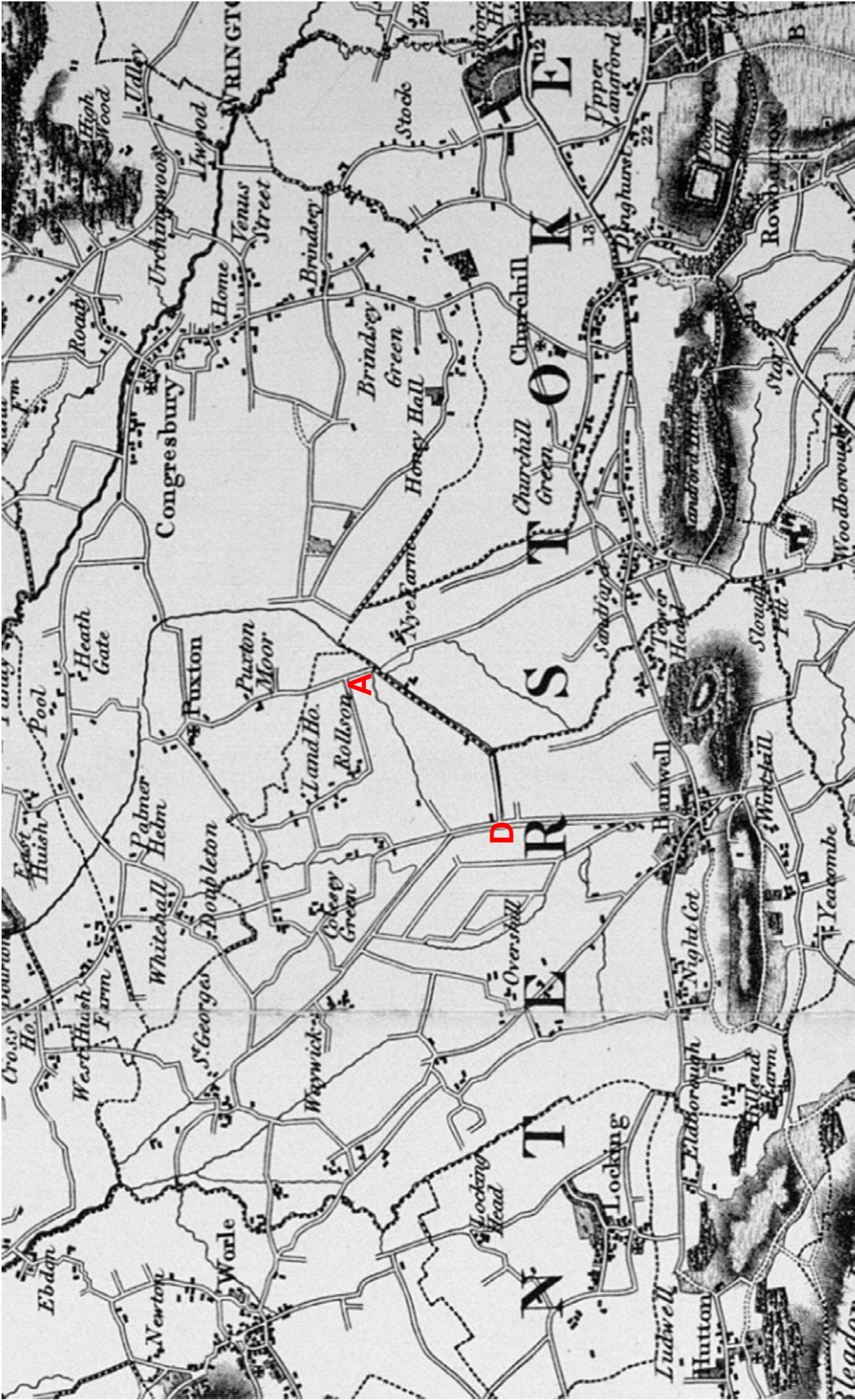
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Document 2  
Greenwood Map of Somerset 1822

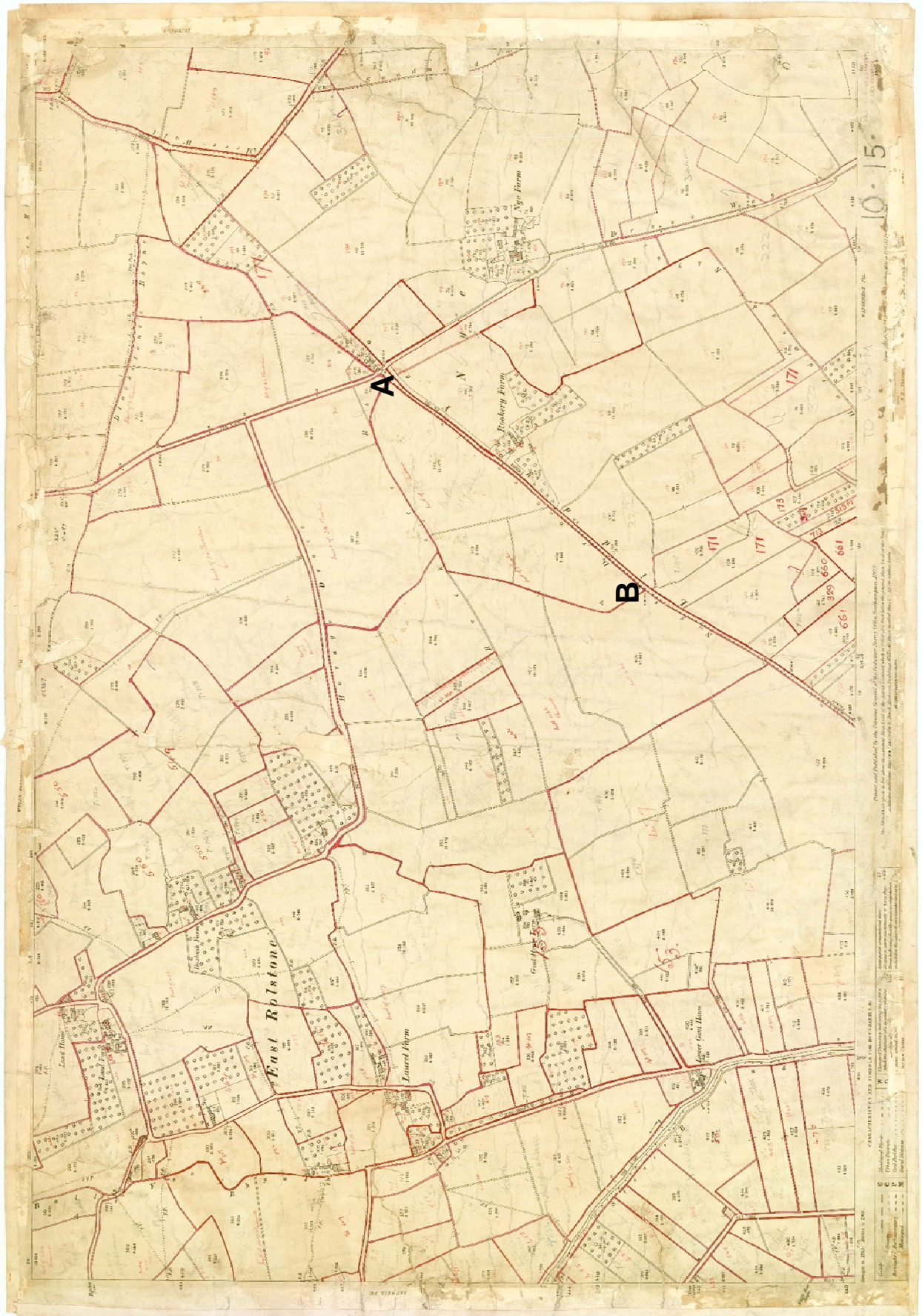




Document 3  
Banwell Tithe Map 1840





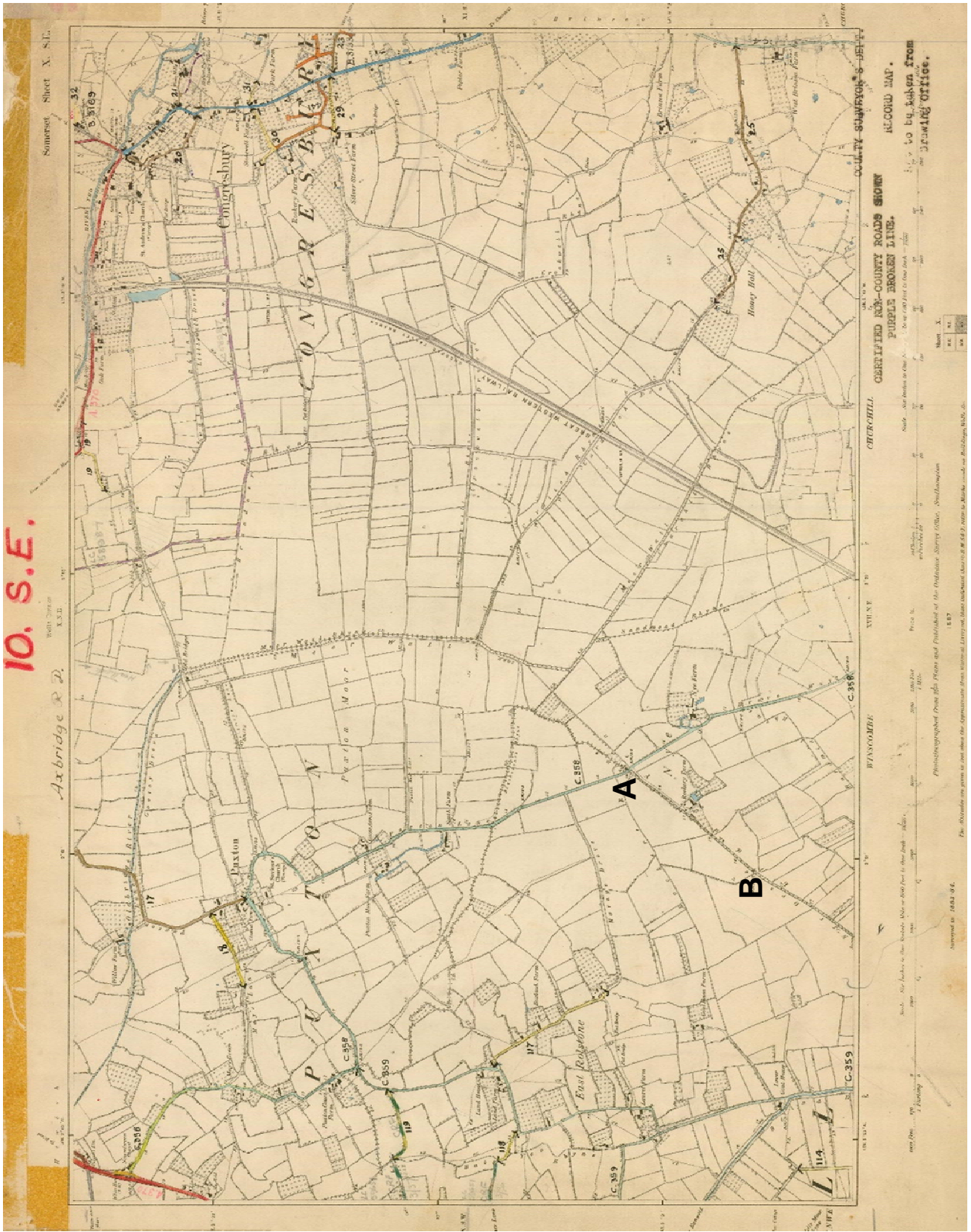








Document 6  
Handover Map 1930 – Sheet 10SE





Document 7  
Handover Map 1930 – Sheet 17NE









